

Opening Statement by Ms. Carter  
November 27, 2012

1 argumentative.

2 *THE COURT:* Sustained. This is an  
3 opening statement.

4 *MS. CARTER:* My client Travoy Hollie  
5 is not guilty of the crime charged. Thank you.

6 *THE COURT:* Call your first witness.

7 *MS. BARNETT:* State calls Sergeant  
8 Richards.

9 *THE COURT:* The witness has been  
10 sworn. You may proceed.

11 *MS. BARNETT:* May I proceed?

12 **CARY RICHARDS,**  
13 having been first duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 BY MS. BARNETT:

16 Q. Would you please state your name for the  
17 record, sir?

18 A. Cary Richards.

19 Q. And where do you work?

20 A. I'm a sergeant with the Houston Police  
21 Department.

22 Q. How long have you been with the Houston  
23 Police Department?

24 A. Coming up on 20 years.

25 Q. All right. Where are you assigned now?

1           A.       The Westside Divisional Tactical Unit.

2           Q.       And what do you do at the Westside  
3 Divisional Tact Unit?

4           A.       We do a little bit of everything. We serve  
5 warrants, we do hot spots, we assist investigators  
6 with their investigations. We do stings. Whatever  
7 needs to be done at that time.

8           Q.       What's a hot spot? What do you mean by  
9 that?

10          A.       Hot spot, when there's an up tick in crime  
11 in a certain area we identify that as a hot spot.  
12 We'll deploy my unit into that location to try to  
13 suppress the crime.

14          Q.       Tell me about the clothes you're wearing  
15 today.

16          A.       Today I was on a surveillance operation,  
17 reason I'm dressed this way.

18          Q.       Did you want me to bring that to the  
19 attention of the Judge?

20          A.       Yes. I didn't want any disrespect what I  
21 was wearing.

22          Q.       All right. Okay. Let me take you back to  
23 the date of October 12th, 2011, and ask you if you  
24 were on duty that day working?

25          A.       Yes, I was.

1 Q. Can you tell us what you were doing that  
2 day?

3 A. That day we had nothing to investigate at  
4 that time so we were doing a hot spot assignment at  
5 Olympia and Hayes, there was an up tick in crime so  
6 we were deployed at that location.

7 Q. Where is Olympia and Hayes? Is it within  
8 the City of Houston I take it?

9 A. Yes.

10 Q. Where is it?

11 A. It's in the southwest section of Houston.  
12 Westheimer and Wilcrest would probably be your  
13 closest major streets.

14 Q. You said you classified it then as a hot  
15 spot. Why?

16 A. Just a little of different street crimes  
17 going on in the area, burglary, few robberies,  
18 narcotic stuff going on.

19 Q. When you are looking around, you just  
20 driving around looking for something? What are you  
21 doing? What are you guys doing out there?

22 A. Yes. We don't have a particular person or  
23 thing to watch, we're just driving around observing  
24 what's going on to try to locate any type of criminal  
25 activity.

1 Q. Are you in street clothes? Are you in  
2 uniform?

3 A. I'm dressed similar as I'm dressed now.

4 Q. Are you in an unmarked car?

5 A. Yes, I am.

6 Q. Now, were you alone or were you with  
7 somebody?

8 A. On that day I had -- my lieutenant was  
9 actually riding with me.

10 Q. Is that Lieutenant Kubiak?

11 A. Yes, ma'am.

12 Q. Were there other officers there that are  
13 part of your unit?

14 A. Yes. Approximately 10 of us -- I'm sorry,  
15 11 of us assigned to the unit, we all stay together.

16 Q. So were y'all all or most of you present in  
17 the same area of Olympia and Hays that day?

18 A. Yes.

19 Q. Were you able to communicate with one  
20 another?

21 A. Yes, we were.

22 Q. How so?

23 A. We use the police radio but we work off a  
24 back channel which is a car to car radio station,  
25 just my unit's on that. It does not go to the

1 dispatch, it doesn't hit the repeaters throughout the  
2 city.

3 Q. Now, what -- did something come to your  
4 attention?

5 A. Yes, it did.

6 Q. Tell me about that. What was it?

7 A. Around four o'clock that afternoon I was  
8 driving down Olympia which is a small street that  
9 separates an apartment complex, goes through an  
10 apartment complex. Going down that street I observed  
11 a car come to abrupt stop in the middle of the  
12 street.

13 Q. Why did that come to your attention?

14 A. You normally don't see people stop in the  
15 middle of the street.

16 Q. Go ahead.

17 A. Then I observed two male individuals jump  
18 out of the passenger side of that vehicle and run  
19 towards two females walking down the sidewalk.

20 Q. Now, did you -- do you remember what type  
21 of car it was or color it was?

22 A. It was an Impala, red maroon Impala.

23 Q. So a red or maroon Impala. And were you  
24 able to tell how many people were in the car?

25 A. Three.

1 Q. So when the two guys got out, that left  
2 who? The driver or passenger or do you remember?

3 A. It left the driver.

4 Q. Okay. Now, had you noticed the two girls  
5 before they got out of the car?

6 A. I really wasn't paying them any attention.

7 Q. Now, when the two guys got out of the car,  
8 where did they go?

9 A. They ran towards the two females.

10 Q. What did you see happen?

11 A. I observed one of the male individuals  
12 jumped out of the front passenger seat to grab ahold  
13 of the female and begin to pull her towards the car.

14 Q. Was there anything distinctive about what  
15 he was wearing?

16 A. He was wearing a blue jean vest.

17 Q. And did that make him easily distinguished  
18 from the other guy?

19 A. Yes. Whenever we're doing anything we look  
20 for such things to identify them far as talking on  
21 the radio so everybody will know what we're talking  
22 about.

23 Q. Was the blue vest used by you and others  
24 during this investigation?

25 A. Yes, that was.

1 Q. Now, when he -- when that guy with the blue  
2 vest approached the girl, what did the other guy do?

3 A. He was looking around as if he was a  
4 lookout.

5 Q. Now, when he grabbed the girl and you  
6 said -- I believe your testimony was he's trying to  
7 force her to the car. What do you mean by that?

8 A. He grabbed her by the arm and was pulling  
9 her towards the car. She was kind of resisting,  
10 trying to pull away.

11 Q. Was she screaming or anything like that?

12 A. I'm not going to say screaming out loud.  
13 You could see she did not want to go towards the car.

14 Q. Could you tell whether or not they knew one  
15 another?

16 A. I didn't know at the time.

17 Q. What about the other girl, what was going  
18 on with the other girl?

19 A. She was kind of standing back at first not  
20 really doing much.

21 Q. Now, do you remember these women, were they  
22 big women, little women or do you recall?

23 A. Little, if I remember right.

24 Q. And so what, if anything, did you do at  
25 that point?

1           A.       At that point, of course, I'm radioing to  
2 my guys to start heading in my direction. I'm not  
3 sure if I have a robbery or kidnapping or what's  
4 going on here, to start heading my direction in case  
5 I need their assistance.

6                       I continued to watch them as it  
7 continued on. I moved up closer to them so that the  
8 males would see me to stop the encounter, the assault  
9 on her.

10          Q.       Let me stop you for a second. When you  
11 said you wanted the males to see, were you saying you  
12 wanted them to see you as a police officer or just a  
13 witness or male or what?

14          A.       Being unmarked plain clothes we don't want  
15 to take police action unless we have to for safety of  
16 everybody. I come out with my pistol drawn, they  
17 don't know I'm police. So really it's just to see me  
18 as a male individual.

19          Q.       Do you know whether or not the male in the  
20 blue vest saw you?

21          A.       I don't recall which one saw me. I know in  
22 that car they made eye contact with me, I don't  
23 remember if it was the driver or front passenger.

24          Q.       What happened after that?

25          A.       Then they all kind of looked in my

1 direction and they got in the car and pulled off and  
2 I thought it was going to be done.

3 Q. Now, where are the two girls?

4 A. They then ran towards the parking lot where  
5 I was at.

6 Q. Do you know if the girls saw you?

7 A. I don't know if they saw me or not.

8 Q. So were -- at the time that you drove close  
9 to what was happening on the sidewalk, was it on the  
10 sidewalk I assume?

11 A. Started -- they were on the sidewalk, the  
12 car was in the street. Started on the sidewalk and  
13 then pulled into the street.

14 Q. When you drove closer to them how close did  
15 you get to them?

16 A. Couple car lengths.

17 Q. When they looked at you, is that when it  
18 broke up?

19 A. Initially it broke up and then I thought it  
20 was done and then they pulled back around towards the  
21 girls that were entering my parking lot where I was  
22 at.

23 Q. What happened after that?

24 A. The two -- same two individuals jumped out  
25 of the passenger side again and regrabbed that female

1 again and started to pull her towards the car.

2 Q. Was the female asking for help or was she  
3 saying anything or do you remember?

4 A. I don't remember what she was saying.  
5 There wasn't really no scream going go on and at that  
6 point the other female then got between the two.

7 Q. Now, are you still in your car at this  
8 point?

9 A. Yes, I was.

10 Q. Now, when the other female got in between  
11 the two, what did she do?

12 A. She then swatted at Mr. Hollie to release  
13 -- swatted down on the arm so he would have to  
14 release her.

15 Q. You called them one of them by name Mr.  
16 Hollie. Is Mr. Hollie going to be the one with the  
17 vest or without the vest?

18 A. The one with the blue vest.

19 Q. Do you see Mr. Hollie in the courtroom  
20 today?

21 A. Yes, I do.

22 Q. Can you point him out and identify an  
23 article of clothing he's wearing today?

24 A. The younger black male at the table over  
25 here the wearing gray shirt and gray tie.

1                   MS. BARNETT: May the record reflect  
2 the witness has identified the defendant?

3                   THE COURT: It shall.

4           Q.       (BY MS. BARNETT) When she was swatting at  
5 Mr. Hollie, what did you see Mr. Hollie do?

6           A.       Then went back towards the car, released  
7 her and went back towards the car and they got in the  
8 car.

9           Q.       What did the two girls do?

10          A.       They ran, continued into the parking lot.

11          Q.       Since the guys have gotten in the car, did  
12 they drive off?

13          A.       At that point they looked back at me, made  
14 eye contact with me again and they begin making what  
15 I call to be gang signs towards me. And there again  
16 being in plain clothes I don't want to address the  
17 issue and then they drove off.

18          Q.       Okay. Were you -- had you identified  
19 yourself as a police officer at that point?

20          A.       No, I have not.

21          Q.       Do you know if there's anything they could  
22 see about you that would make them think you were a  
23 police officers?

24          A.       No, ma'am.

25          Q.       So when you're saying gang signs, what do

1 you mean?

2 A. I don't recall the exact signs but when you  
3 start up in the windshield start making all these  
4 different signs towards me, I took them as being gang  
5 type of signs.

6 Q. Is that a heavy gang area, Olympia at Hayes  
7 Road?

8 A. Little bit south is heavy, where they're at  
9 is light to moderate.

10 Q. When they're flashing what you believe to  
11 be gang signs, was the car stationary or was it  
12 moving?

13 A. It was stationary and then went into slow  
14 roll after that.

15 Q. Were you stationary or were you moving?

16 A. I was stationary.

17 Q. What do you think should happen at that  
18 point they separated the cars about to go off the  
19 girls are in the parking lot what do you do?

20 A. I'm waiting for the other two officers to  
21 arrive with me. At that point one of the other  
22 unmarked officers arrived with me. The uniformed  
23 guys in the police cars, we're still waiting to get  
24 to us. All this was a short period of time. It  
25 takes them a minute or two to get to me.

1                   I observed one of my other officers  
2 arriving with him. I told him to go ahead and follow  
3 the vehicle, wait for the marked units to get him  
4 stopped. I stayed behind to stay with the females  
5 and to make sure everything was okay.

6           Q.       What was the officer's name you sent off to  
7 follow Travoy?

8           A.       Officer Chaffin.

9           Q.       Was Mr. Hollie going to be the driver of  
10 the vehicle or the passenger or do you recall?

11          A.       Front passenger.

12          Q.       Now, when you approached the females, where  
13 were they?

14          A.       They were in the parking lot coming towards  
15 me and then I got out and talked with them.

16          Q.       Did you identify yourself?

17          A.       At that time I did, yes.

18          Q.       What did you -- when you approached the  
19 females, what did you want to do?

20          A.       At that point make sure they're secured and  
21 all right. I had another plain clothes officer  
22 arrive. At that point I could hear Officer Chaffin  
23 on the radio hollering they'd just thrown a magazine  
24 clip out of the car.

25                   MS. CARTER: Objection, Your Honor.

1 MR. JONES: Stand up.

2 MS. CARTER: Hearsay, Your Honor.

3 THE COURT: That will be overruled.

4 Q. (BY MS. BARNETT) Go ahead.

5 A. Being that I heard a magazine was thrown  
6 out of the car as the -- right before the traffic  
7 stop was initiated, being supervisor I realized I  
8 needed to go make that scene. So Officer Lombardo  
9 then secured, talked -- however you want to call  
10 it -- to these two females.

11 Q. Okay. Did you -- were you able to have any  
12 kind of conversation with the females?

13 A. Very short.

14 Q. What did the conversation from your end  
15 consist of?

16 A. I don't recall exactly because it was so  
17 short because I yelled at Officer Lombardo, take  
18 them, I'm going off to the next scene.

19 Q. Okay. Basically I guess you're trying --  
20 did you want to know if it was, in fact, a kidnapping  
21 or robbery or an assault?

22 A. At that point based on what I observed, I  
23 know it was something we needed to address as law  
24 enforcement. Then a clip coming out of a car,  
25 magazine to a gun coming out of car, I need to go

1 down there and be with that part. So I didn't get  
2 the whole detail of everything. I just knew there  
3 had been an assault that took place.

4 Q. When you're talking about a magazine, what  
5 is a magazine of a gun mean? What does that mean  
6 exactly?

7 A. It's the thing that goes in the gun that  
8 holds the bullets.

9 Q. If we're talking about like a pistol,  
10 that's small little magazine that's underneath where  
11 you grip the pistol, right?

12 A. Correct.

13 Q. Is that the magazine -- did you see the  
14 magazine that was recovered?

15 A. Later on I did.

16 Q. Is that what we're talking about that small  
17 magazine that comes out of the pistol?

18 MS. CARTER: Objection, Your Honor,  
19 she's leading.

20 THE COURT: Be overruled.

21 A. It was a larger magazine that goes into  
22 what we identified as assault rifle.

23 Q. (BY MS. BARNETT) An assault rifle?

24 A. Yes.

25 Q. Can you tell the jury approximately how big

1 that would have been if you recall?

2 A. About that long, my guess it holds 20 to 30  
3 rounds to an AK, some type of assault rifle.

4 Q. Now, this information was radioed to you  
5 and you left that scene where the girls were and  
6 traveled to the scene of the stop?

7 A. Yes, ma'am.

8 Q. Once you got to the scene of the stop, what  
9 did you find?

10 A. At that point they were taking the three  
11 individuals into custody or detaining them, putting  
12 them in handcuffs and putting them in the back of a  
13 police car.

14 Q. Did you take a look at the car?

15 A. Yes, we did.

16 Q. What did you see when you looked inside the  
17 car?

18 MR. JONES: May we approach, Judge?

19 THE COURT: You may.

20 **(At the Bench)**

21 MR. JONES: I think we're getting  
22 ready to get to the part when she talks about what's  
23 in the car and this is subject to our motion to  
24 suppress.

25 **(End of Bench Discussion)**

1                    *THE COURT:* Ladies and gentlemen, at  
2 this time we'll take a short recess. You may retire  
3 to the jury room. Do not discuss anything about  
4 this, we'll call you back shortly.

5                    **(Recess taken)**

6                    *THE COURT:* You may proceed.

7                    *MS. BARNETT:* Also, we have another  
8 gun to bring forward that's apparently closer in  
9 size.

10                   *THE COURT:* Let me see it.

11                   *MS. BARNETT:* They're bringing it in.

12                   *MR. JONES:* I want to take him on voir  
13 dire about that gun, too, before we get into anything  
14 else about the gun. I'd like to see the magazine  
15 that was taken on the day of this offense. If they  
16 don't have that, that's nothing to compare anything  
17 with, Judge.

18                   *MS. BARNETT:* It was returned back to  
19 the owner.

20                   *MR. JONES:* It doesn't matter. We  
21 have a right to have it here, not having any guessing  
22 that this is it.

23                   *THE COURT:* Wait a minute.

24                   *MR. JONES:* Judge, that's an AR15,  
25 that's AK47. He testified it was an AK47 magazine.

1 Two different weapons, one's made in the United  
2 States, one's made in Russia.

3 *THE COURT:* Ask him the question.

4 *Q.* (*BY MS. BARNETT*) Is this similar to the  
5 magazine that was thrown out of the window in size?

6 *A.* It's very similar.

7 *MS. BARNETT:* Judge, in fact, I would  
8 welcome an instruction to the jury this is not the  
9 same gun. We're not trying to say it was same gun.

10 *THE COURT:* Do you have any questions  
11 of this officer?

12 *MR. JONES:* Yes.

13 **VOIR DIRE EXAMINATION**

14 *Q.* (*BY MR. JONES*) What kind of magazine is  
15 this?

16 *A.* I don't know.

17 *Q.* Did you on the date of the arrest find a  
18 magazine the same as this?

19 *A.* Similar.

20 *Q.* Did you find a magazine the same as this?

21 *A.* I don't know if it was the same as this or  
22 not.

23 *MR. JONES:* Judge, we would renew our  
24 objection.

25 *THE COURT:* That will be overruled.

1                   MR. JONES: All right.

2           Q.       (BY MR. JONES) Now you say similar, what is  
3 your background on semiautomatic and automatic  
4 weapons?

5                   MS. BARNETT: Judge, I object. He's  
6 talking about the size of a magazine. It's a  
7 magazine. He's not trying to talk about what type it  
8 is, what kind of magazine it is, what type of rifle  
9 it is. I'm not trying to elicit any of that just the  
10 magazine size.

11                  MR. JONES: Judge, she has already  
12 before the jury asked questions of this man which  
13 probably should have been objected to relevant to  
14 finding a magazine that fits an AK47. She brings in  
15 here AK47 -- she brings here AK -- AR15 and she's  
16 using a clip like this that will not fit in that  
17 other magazine, it's not the same, it's not even --  
18 he doesn't know if it's similar.

19                  THE COURT: Wait. Mr. Jones he just  
20 testified.

21                  MR. JONES: I'm going to ask him,  
22 Judge.

23           Q.       (BY MR. JONES) When you say similar do you  
24 mean -- how many rounds are held in this clip, if you  
25 know?

1                   THE WITNESS: Can I say something?

2                   THE COURT: You may.

3                   THE WITNESS: I can look at a gun  
4 magazine and not know what type, what model, brand or  
5 anything it is, I know it's a gun magazine. To see  
6 it coming out the window, you don't know if it's an  
7 AK, AR or what caliber it is, you just know it by  
8 sight that it's a magazine.

9           Q.       (BY MR. JONES) And you have not seen that  
10 magazine in the courtroom?

11           A.       Today, no.

12           Q.       And that magazine would not be curved?

13           A.       Wouldn't be what?

14           Q.       Curved. This is curved magazine sort of  
15 like a banana clip, it's shaped like a banana, is  
16 that right?

17           A.       I don't know if it was that size, I don't  
18 remember if it had little curve to it or straight or  
19 not. We knew it was a magazine to an A -- I'm not  
20 going to say AR or AK -- to an assault type rifle.

21           Q.       How many different assault type rifles are  
22 there?

23           A.       I don't know.

24           Q.       In the United States?

25           A.       I have no clue.

1           Q.     Have you any training -- withdraw that  
2 question. This is not a magazine that came out the  
3 window?

4           A.     No, it's not.

5           Q.     As far as its shape, the number of  
6 cartridges it holds and the size of the cartridges it  
7 holds, the caliber of cartridges it holds you can't  
8 say that it is similar?

9                    MS. BARNETT: He did say that, Judge.

10                   THE COURT: That's right. That will  
11 be overruled. Move along.

12           Q.     (BY MR. JONES) You don't know what kind of  
13 bullets go in here, do you? The cartridge of the  
14 bullets --

15                   MS. BARNETT: It's not relevant.

16                   THE COURT: Mr. Jones, the Court has  
17 ruled. He says it's similar, I'll move on to the  
18 weapon at this point.

19                   Tell me about the weapon, why do you  
20 want to use that?

21                   MS. BARNETT: I don't, just the  
22 magazine.

23                   THE COURT: Thank you. Take it out of  
24 the courtroom and your objection, Mr. Jones?

25                   MR. JONES: My objection is that the